

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

ANTOINE ELTORIO TERRY,

Petitioner,

v.

CIVIL ACTION NO. 2:22-cv-00137  
(Criminal No. 2:20-cr-00036)

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION AND ORDER**

On March 14, 2022, the Petitioner, proceeding *pro se*, filed his *Motion to Vacate, Set Aside, or Correct a Federal Sentence, or Conviction Pursuant to 28 U.S.C. § 2255* (Document 42). On August 25, 2023, the Petitioner filed a *Motion Under Rule 22 Application to Individual Justice* (Document 48).

By *Standing Order* (Document 43) entered on March 16, 2022, the matter was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On November 12, 2024, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 71) wherein it is recommended that this Court deny the *Motion to Vacate, Set Aside, or Correct a Federal Sentence, or Conviction Pursuant to 28 U.S.C. § 2255* (Document 42), deny the *Motion Under Rule 22 Application to Individual Justice* (Document 48), and dismiss the matter

from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by November 29, 2024.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the *Motion to Vacate, Set Aside, or Correct a Federal Sentence, or Conviction Pursuant to 28 U.S.C. § 2255* (Document 42) be **DENIED**, the *Motion Under Rule 22 Application to Individual Justice* (Document 48) be **DENIED**, and this matter be **DISMISSED** from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: December 3, 2024



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA